

GIBSON, DUNN & CRUTCHER LLP
LAUREN R. GOLDMAN (*pro hac vice*)
lgoldman@gibsondunn.com
DARCY C. HARRIS (*pro hac vice*)
dharris@gibsondunn.com
200 Park Avenue
New York, NY 10166
Telephone: (212) 351-4000
Facsimile: (212) 351-4035

ELIZABETH K. MCCLOSKEY, SBN 268184
emccloskey@gibsondunn.com
ABIGAIL A. BARRERA, SBN 301746
abarrera@gibsondunn.com
555 Mission Street, Suite 3000
San Francisco, CA 94105
Telephone: (415) 393-4622
Facsimile: (415) 801-7389

ANDREW M. KASABIAN, SBN 313210
akasabian@gibsondunn.com
333 South Grand Avenue
Los Angeles, CA 90071 USA
Telephone: (213) 229-7311
Facsimile: (213) 229-6311

Attorneys for Defendant Meta Platforms, Inc.

COOLEY LLP
MICHAEL G. RHODES, SBN 116127
rhodesmg@cooley.com
KYLE C. WONG, SBN 224021
kwong@cooley.com
CAROLINE A. LEBEL, SBN 340067
clebel@cooley.com
3 Embarcadero Center, 20th Floor
San Francisco, CA 94111-4004
Telephone: 415.693.2000
Facsimile: 415.693.2222

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

IN RE META PIXEL TAX FILING CASES

This Document Relates To:

All Actions

Master File No. 3:22-cv-07557-SI (VKD)

**DEFENDANT META PLATFORMS,
INC.'S STATEMENT IN SUPPORT OF
PLAINTIFFS' ADMINISTRATIVE
MOTION TO CONSIDER WHETHER
CASES SHOULD BE RELATED**

Date Action Filed: December 1, 2022

On October 8, 2023, plaintiffs in the above-captioned case (the “Consolidated Action”) filed an administrative motion to consider whether *Hunt v. Meta Platforms, Inc.*, Case No. 3:23-cv-04953-TSH (“*Hunt*”), is related to the Consolidated Action and, if so, whether the *Hunt* claims against Meta should be severed. *See* Dkt. 115.

Meta agrees with the Consolidated Action plaintiffs that the claims against Meta in these two cases are related.¹ The focus and key allegations against Meta in each action closely track one other—they involve the same technology, the same website, the same class of users who visited that website, and the same alleged harm. Plaintiffs in both cases allege that one of Meta’s business tools—the Meta Pixel—was installed on H&R Block’s website, and as a result, Meta allegedly received sensitive information regarding users of H&R Block’s website. *Compare Hunt* Dkt. 12 ¶¶ 86–89, with Consolidated Action Dkt. 71 ¶¶ 1–2, 6–10, 12, 58, 62. The sensitive information in both actions allegedly includes information that users provided to H&R Block while filing out tax returns online, which Meta then allegedly used for advertising. *Hunt* Dkt. 12 ¶¶ 1–5, 9; Consolidated Action Dkt. 71 ¶¶ 1, 53–54. Plaintiffs in both cases further allege that Meta did not have plaintiffs’ consent to receive their information. *Hunt* Dkt. 12 ¶¶ 116–123; Consolidated Action Dkt. 71 ¶¶ 63–67. Both complaints also accuse Meta of other identical wrongful conduct, including purportedly making false or misleading statements about its privacy practices. *Hunt* Dkt. 12 ¶¶ 116–126; Consolidated Action Dkt. ¶¶ 69–70.

The class definitions and relief sought also closely overlap. The Consolidated Action plaintiffs purport to represent a class of “[a]ll people in the United States whose tax filing information was obtained by Meta from an online tax preparation provider such as H&R Block, TaxAct, or Tax Slayer.” Consolidated Action Dkt. 71 ¶ 80. The *Hunt* plaintiff purports to represent a class that is subsumed within the Consolidated Action’s class: “All persons in the United States and its territories who submitted personal information to H&R Block for the purpose of online tax return preparation during the time the Meta Pixel . . . existed on the H&R Block websites.” *Hunt* Dkt. 12 ¶ 217. Moreover, both the *Hunt* plaintiff and Consolidated Action plaintiffs seek similar relief, including statutory damages, monetary damages, and injunctive relief. *Hunt* Dkt. 12 Prayer for Relief; Consolidated Action Dkt. 71

¹ Although the deadline to file a response under Local Rule 7-11 expired on October 10, 2023, Meta respectfully submits this Statement given the *Hunt* plaintiff’s opposition to the Administrative Motion.

1 Prayer for Relief. None of the parties dispute that *Hunt* is related to the Consolidated Action,
 2 underscoring the significant overlap between these two cases.

3 For this reason, Meta also agrees with the Consolidated Action plaintiffs that severance of the
 4 *Hunt* claims brought against Meta is warranted. “Rule 21 allows the Court to sever [] claims against
 5 [a defendant] even though it was properly joined as a defendant.” *Bradford Techs., Inc. v. Biggers*,
 6 2014 WL 12641953, at *5 (N.D. Cal. May 27, 2014). Severance is proper where it “will serve the ends
 7 of justice and further the prompt and efficient disposition of litigation.” *Khanna v. State Bar of Cal.*,
 8 2007 WL 2288116, at * 2 (N.D. Cal. 2007). In considering whether to sever under Rule 21, a court
 9 considers “(1) whether the claims arise out of the same transaction or occurrence; (2) whether the
 10 claims present some common questions of law or fact; (3) whether settlement of the claims or judicial
 11 economy would be facilitated; (4) whether prejudice would be avoided if severance were granted; and
 12 (5) whether different witnesses and documentary proof are required for the separate claims.” *SEC v.*
 13 *Leslie*, 2010 WL 2991038, at *4 (N.D. Cal. July 29, 2010). These factors all weigh in favor of
 14 severance.

15 Factors one, two, and five weigh in favor of severance because the *Hunt* claims against Meta
 16 and the Consolidated Action claims all arise out of the same transaction or occurrence, present common
 17 questions of law or fact, and will draw upon the same witnesses and documentary proof. As explained
 18 above, the *Hunt* plaintiff’s allegations are closely related to those in the Consolidated Action. Both
 19 cases allege that Meta received information about H&R Block users without their consent as a result
 20 of H&R Block’s installation of the Meta Pixel on its website, which Meta later used for advertising
 21 purposes. That the *Hunt* plaintiff asserts different claims than the Consolidated Action plaintiffs does
 22 not compel a different result because the claims in both actions arise from the same alleged conduct.
 23 *See Netlist, Inc. v. Smart Modular, Inc.*, 2013 WL 12128691, at *5 (C.D. Cal. Nov. 26, 2013); *see also*
 24 *Whelan v. Miles Indus.*, 2013 WL 12174135, at *1–2 (N.D. Cal. Jan. 3, 2013) (severing and
 25 consolidating claims with related litigation based on same conduct, though the alleged causes of action
 26 were not identical). And because the claims are based on the same facts, the same documentary
 27

evidence and witnesses will likely be implicated. Therefore, factors one, two, and five all weigh in favor of severance.

Factor three also weighs in favor of severance because severance and relation will increase efficiencies. If the *Hunt* claims against Meta are not severed, there will be a significant and unnecessary burden on the judicial system due to simultaneous, largely duplicative discovery processes proceeding in parallel in different cases. *Colors of India v. Nielsen*, 2018 WL 6430118, at *5 (C.D. Cal. Oct. 19, 2018) (“Indeed, severing the claims would likely avoid lengthy delays associated with duplicative, unnecessary discovery requests.”). Further, the parties in the Consolidated Action have already negotiated a Clawback Order, Protective Order, and ESI Protocol with the assistance of Judge DeMarchi, Dkts. 65, 73, 93, and discovery is underway. Severance, relation, and eventual consolidation will thus facilitate judicial economy and relieve another court from having to oversee negotiations between the *Hunt* plaintiff and Meta regarding duplicative discovery protocols, as well as any subsequent discovery disputes that may arise. In sum, severance and relation will promote efficiencies and avoid the unnecessary burden on the judicial system of having to resolve the same (or similar) discovery disputes multiple times in overlapping actions regarding the same factual allegations, witnesses, and documentary evidence.

Finally, factor four weighs in favor of severance because severance and relation will avoid prejudicing Meta, with no prejudice to the *Hunt* plaintiff. Without severance, relation, and consolidation, Meta will be required to defend the same facts and allegations in two different cases, with all of the attendant burden and expense of unnecessarily duplicative briefing and discovery; denying severance would also increase the risk of inconsistent results that may result from having to litigate the same issues in multiple cases. *See Netlist, Inc. v. Smart Modular, Inc.*, 2013 WL 12128691, at *7 (C.D. Cal. Nov. 26, 2013); *XpandOrtho, Inc. v. Zimmer Biomet Holdings, Inc.*, 2022 WL 18110171, at *5 (S.D. Cal. Nov. 22, 2022). The *Hunt* plaintiff, on the other hand, will not be prejudiced by severance. The *Hunt* action is still in a very early phase of litigation, so severance of the claims against Meta will not interfere with *Hunt*. *See Valez v. Billingsleys’ Main St. Grill, Inc.*, 2020 WL 2213463, at *2 (C.D. Cal. Apr. 2, 2020) (“Because this litigation . . . is at an early stage, the Court also

determines that no substantial right will be prejudiced by the severance of the claims.”). In addition, the fact that the *Hunt* plaintiff seeks the same relief as that sought in the Consolidated Action—monetary damages and injunctive relief for a putative class that is subsumed within the Consolidated Action class—essentially concedes that there will be no prejudice to the *Hunt* plaintiff if the claims against Meta are severed and consolidated with the Consolidated Action. *See Hunt* Dkt. 12 ¶ 217, Prayer for Relief; Consolidated Action Dkt. 71 ¶ 80, Prayer for Relief.

All parties agree that *Hunt* is related to the Consolidated Action. The only question is whether the claims against Meta in *Hunt* should be severed and consolidated with the Consolidated Action. For the reasons explained above, they should.² This Court should enter an order relating the *Hunt* case to the Consolidated Case, and then proceed to sever the claims against Meta in *Hunt* so that they can be consolidated with the Consolidated Action. *See Consolidated Action* Dkt. 29.

Dated: October 11, 2023

GIBSON, DUNN & CRUTCHER LLP

By: /s/ Lauren R. Goldman
Lauren R. Goldman

COOLEY LLP

By: /s/ Michael G. Rhodes
Michael G. Rhodes

Attorneys for Meta Platforms, Inc. (formerly known as Facebook, Inc.)

² To the extent the Court determines that the request for severance should be heard by the judge currently presiding over the *Hunt* case, Meta respectfully requests permission to fully brief this issue before the *Hunt* court.

CIVIL L.R. 5-1(h)(3) ATTESTATION

Pursuant to Civil Local Rule 5-1(h)(3), I, Lauren R. Goldman, hereby attest under penalty of perjury that concurrence in the filing of this document has been obtained from all signatories.

DATED: October 11, 2023

GIBSON, DUNN & CRUTCHER LLP

By: /s/ Lauren R. Goldman
Lauren R. Goldman